**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1517 OF 1992**

Anup Mohanlal Motwani. .. Petitioner.

vs.

State of Maharashtra

& Anr. . .. Respondents.

Mr. N.B. Shah for petitioner.

Mr. S.K. Chinchalikar AGP for Respondent no.1.

Mr. P.J. Pawar i/by Ms. Sonia S. Bankapur

for Respondent Nos. 2 to 5.

**CORAM : A.P. DESHPANDE, J.**

**DATE : 15th November, 2006.**

P.C.

. The petitioner entered into an agreement for purchase of the suit land bearing Survey No. 40/1, admeasuring 9 Acres 12 Gunthas situated at village Kune, Taluka Maval, District Pune from respondent nos. 3 to 5 and on payment of the entire consideration, the petitioner-plaintiff claims to have been put in possession of the agricultural land by the said respondents. It is to be noted that the respondent no. 2 had entered into an agreement with the respondent nos. 3 to 5 for purchase of the suit

land and he had transferred all the rights, title and interest in the suit land in favour of the petitioner pursuant to the agreement of sale. It is the case of the petitioner that he has paid the entire consideration of Rs. 5 lacs as was agreed. The petitioner moved the Tehsildar for entering the names in the revenue record. The Tehsildar made a mutation entry in that regard on 20.8.1988 vide mutation entry no. 1284. By the said entry, the petitioner's name is entered in Form No. 6. The Circle Inspector while entering the transaction in respect of the transfer of the land, made an entry to the effect that the purchaser/ petitioner not being an agriculturist, the transaction is void as permission of the Govt. was not obtained. In view of the said entry that the petitioner is not an agriculturist, proceedings were taken out under section 84 (C) of the Bombay Tenancy and Agricultural Lands Act. After issuing appropriate notices to the parties and on being convinced that he being an agriculturist, held that the transaction between the petitioner and the respondent no. 2 was legal and an order to that effect came to be passed on 10.9.1990.

2. The Sub-Divisional Officer, took out suo motu proceedings under section 76(a) of the Bombay Tenancy and Agricultural Lands Act and issued notice to the petitioner and respondent no. 2. The

petitioner appeared before SDO who made inquiries in regard to the proceedings under Section 84 (C) of the Bombay Tenancy Act. The S.D.O. held that the petitioner is an agriculturist on the date of purchase of the land but doubted the validity of the transaction on the ground that the petitioner had not sought permission of the competent authority viz., Collector. So far as the observation about seeking permission of the Collector is concerned, the same has been made as it was noticed that the land was Patel Watan Inamdar land and the same was converted into old tenure after necessary najarana was paid by the ex-watandar. The SDO was of the view that as the land was a regrant, before transfer of the same, permission of Collector was necessary. Taking this view of the matter, the SDO allowed the revision and quashed and set aside the order passed by Tehsildar.

3. Aggrieved by the order passed by the SDO, the present petitioner moved the Maharashtra Revenue Tribunal vide MRT Petition IV3/91. The main thrust of the submission made by the learned counsel appearing for the petitioner before the Tribunal was that unless and until there is a breach of provisions of the Bombay Tenancy Act, a transaction cannot be treated as illegal and as the SDO has not found any violation of any of the provisions of the Bombay Tenancy Act, the SDO has exercised

jurisdiction not vested in it by law in setting aside the order passed by the Tehsildar and in directing the resumption of the land. The Tribunal has not considered the said submission in its proper perspective, is a submission made by the learned counsel appearing in this petition. The learned counsel submits that even if a transaction is illegal under any other law for the time being in force, the same cannot be declared as illegal in proceedings under Section 84 (C) of the Bombay Tenancy Act. Relying on the language used in the said section, it is contended that the Tribunal as also S.D.O. erred in law in vitiating the transaction by holding that the petitioner has failed to obtain prior permission of the Collector under the provisions of the Maharashtra Revenue Patels (Abolition of office) Act, 1962 and the circulars issued thereudner. Section 84(C)(1) reads thus :-

> "84C. Disposal of land, transfer or acquisition of which is invalid.-(1) Where in respect of the transfer or acquisition of any land made or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the

> provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in section 84B and decide whether the transfer or acquisition is or is not invalid."

A bare perusal of the said section reveals that when any transfer of land is made after the commencement of the Amending Act of 1955, the Mamlatdar suo motu or on application of any person interested in such land has reason to believe that <u>such transaction ..... is or becomes invalid under any of the provisions of this Act</u>, the Mamlatdar shall issue a notice and hold an inquiry as provided in Section 84B and decide whether the transfer or acquisition is or is not invalid. The power vested with Mamlatdar under section 84 C to hold an inquiry is only restricted to the breach of the provisions of this Act and is not in relation to holding of an inquiry in regard to the validity or invalidity of the transaction under any other Act or terms of grant by the Government. In the present case, the S.D.O. so also the Tribunal does not hold that the transfer/transaction is in breach of Section 53 or Section 63 or for that matter any other provision of the Act but goes to hold that the said transfer is hit by the provisions of the Maharashtra Revenue Patels (Abolition of office) Act, 1962 and circulars issued thereunder and the terms of re-grant which

provide for seeking of prior permission of the Collector before purchase of the land. As the authorities below have not found the transaction to be invalid, being in breach of the provisions of the Tenancy Act, no declaration of invalidation could have been made in exercise of powers under section 84 C of the Act.

4. The learned counsel appearing for the respondent including the Assistant Govt. Pleader supported the order passed by the authorities below. However, it is not in dispute that both the authorities below have recorded a finding that there is no breach of any of the provisions of the Tenancy Act but the breach is in regard to the conditions of re-grant or the provisions of the Maharashtra Revenue Patels (Abolition of office) Act and the circulars issued thereunder. The said illegality is not the one which is expected to be inquired into by Mamlatdar under Section 84C and thus that part of the inquiry is wholly without jurisdiction. Be it as it may, as the authorities below have found that the transaction is not hit by any of the provisions of the Tenancy Act, the impugned orders cannot be sustained and need to be quashed and set aside.

5. In the result, the writ petition is allowed. The impugned orders passed by S.D.O. and the MRT are quashed and set aside. Rule is made absolute

in above terms.

**(A.P. Deshpande, J.)**